76-1492

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

..... Term, 1977

No. .....

HARRIS L. JACKSON,
Plaintiff-Petitioner,

vs.

WESLEY J. REILING,
Defendant-Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE STATE OF MINNESOTA IN SUPREME COURT

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PREFACE

The petitioner respectfully begs the indulgence of the Court in the advent of a poor choice of words on the part of the petitioner.

This petition, in absence of counsel, is meant to be an honest effort by the petitioner to secure justice lost for faith initially misplaced in the hands of incompetent and disinterested counsel.

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OPINION

The opinion to affirm the decision of the trial court is set forth in full in the appendix with footnote corrections added for the court's errors in reading and for unfounded assumptions on the part of the court.

JURISDICTION

This Court's jurisdiction is invoked under the provisions of 28 U.S.C. § 1257 (3).

QUESTIONS RAISED

Whether the trial court in substituting its judgment for that of the jury violated the petitioner's right to a trial by jury as guaranteed by the Seventh Amendment of the Constitution of the United States.

Whether the trial court's refusal to abide by Minnesota Statute as dictated by proven fact and the trial court's refusal to meet its responsibility in applying Minnesota Statute as dictated by proven fact is error.

CONSTITUTIONAL PROVISION INVOLVED

Constitution of the United States, Amendment VII:

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. . ."

MINNESOTA STATUTES INVOLVED

169.18 Driving Rules. Subd. 5. Driving left of roadway center. (a) No vehicle may be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to the right-hand side of the roadway before coming within 100 feet of any vehicle approaching from the opposite direction; (b) Except on a one-way roadway, no vehicle shall, in overtaking and passing another vehicle or at any

other time, be driven to the left half of the roadway under the following conditions:

(2) When approaching within 100 feet of or traversing any intersection within a city or without if so posted:

§169.19 Turning and Starting. Subd. 1. Turning at intersection. The driver of a vehicle intending to turn at an intersection shall do so as follows: (2) approach for a left turn on other than one-way roadways shall be made in that portion of the right half of the roadway nearest the center line thereof, and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable the left turn shall be made in that portion of intersection to the left of the center of the intersection;

§169.20 Right of Way. Subd. 2. Left turns. The driver of a vehicle intending to turn to the left within an intersection shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard.

STATEMENT OF THE FACTS

This is a civil suit brought before the District Court, Hennepin County, Fourth Judicial District, Judge Richard J. Kantorowicz presiding and commencing on the 10 day of September, 1975. A special verdict resulted in a jury decision of 55% of $5000.00. The decision was affirmed following appeal to the State of Minnesota in Supreme Court.

The plaintiff alleged that on July 17, 1965 the defendant while operating his vehicle in a negligent and unlawful manner caused the plaintiff bodily injury and property damage.

The defendant from a stopped position (T. pp 172, line 2-9) at the far edge of the intersection (T. pp 173, line 15) (T.

pp 23, line 20-21) turned directly into the path of the plaintiff's oncoming vehicle. (T. pp 24, line 7-9)

The defendant's left turn was in violation of Minnesota Statutes 169.18 Subd. 5.(a) and (b), 169.19 Subd. 1. (2), and 169.20 Subd. 2.

The defendant's vehicle on entering the intersection broke off several of the semaphore guard posts at the time of collision. (T. pp 36, line 24-25)

The defendant's vehicle being crushed on both sides was a total loss. The plaintiff's vehicle following replacement of a plastic water pump was immediately returned to service.

The court in view of the obvious facts denied the plaintiff's motion for a directed verdict. The court's indecision prejudiced the jury resulting in mediocre jury decision.

The State of Minnesota in Supreme Court on appeal gave its approval to the district courts disregard of the law.

REASON FOR GRANTING THE WRIT

The Decision of the Trial Court Directly Conflicts with the Seventh Amendment of the Constitution of the United States.

It is clear that the policy of the court in conducting the case in chambers (T. pp 198-205) and substituting the court's ignorance in regard to pension for the jury's judgment on the worth of a pension is in violation of the Constitution of the United States.

The trial court in chambers without qualification ordered the plaintiff's attorney to leave out and keep from the jury all evidence and claim for a pension lost by the plaintiff. (T. 200-201)

In *Kozar vs. Chesapeake & O Ry Co.*, D.C. Mich. 1970, 320 F. Supp. 335, the Supreme Court stated that a substitution of the trial court's judgment for that of the jury is violation of right under this Amendment to jury at common law.

In *Snead vs. New York Central R. Co.*, C.A. W. Va. 1954, 216 F.2d 169 and in *Powers vs. Continental Cas. Co.*, C.A. Ark. 1962, 301 F.2d 386 and in *Cheffy vs. Pennsylvania R. Co.*, D.C. Pa. 1948, 79 F. Supp. 252, the Supreme Court stated that under this amendment's guaranty of trial by jury, it is for the jury to weigh the evidence and pass upon its credibility.

It is clear that the exclusion of the facts (noted in the Appendix, A-6) by the court is in direct opposition to the Seventh Amendment.

The Minnesota Statutes are quite clear and the court being fully aware of the defendant's disregard for the law (T. pp 203, line 16-18) and in absence of proof to the contrary chose to disregard the law and to disregard the court's responsibility in denying the motion by the plaintiff's attorney for a directed verdict. (T. pp 201, line 17 thru pp 203, line 24)

In *Olson vs. Hiel*, 177 F.2d 552, where a south bound motorist entered the intersection of divided highways controlled by traffic lights on the green light and made an inside left turn thereby depriving himself protection of the traffic lights was struck by a northbound motorist proceeding in the north lane on the green light in his lane, place of the collision was a separate "intersection" within Minnesota law regulating highway traffic and failure of the trial court to so instruct the jury on request was error.

In *Dahm vs. R. N. Cardozo & Bro.*, 206 N.W. 377, 165 Minn. 193, the court decided that the defendants presence on the wrong side of the street, causing injury creates liability unless excusable or justifiable.

In *Purdes vs. Merrill*, 128 N.W. 2d 164, 268 Minn. 129 the court decided failure to make a left turn as dictated by Minnesota Statute 169.19 and causing injury creates liability.

In *Godeen vs. Bennett*, 120 N.W. 2d 393, 243 Minn. 389 the court decided the driver has the right to assume approaching

vehicles will remain on their side of the road until a left turn can be safely made.

It is obvious that a left turn was made in disregard of the law at the expense of the plaintiff.

It is obvious that the court has shirked its responsibility in not finding in favor of the plaintiff in view of the evidence and past practice.

CONCLUSION AND RELIEF

For the reasons set forth herein, a Writ of Certiorari should issue to review the decision of the State of Minnesota in Supreme Court. In addition the United States Supreme Court should direct the State of Minnesota in Supreme Court to allow the petitioner a new trial free of interference from the lower courts and in accordance with the Statutes of Minnesota.

The United States Supreme Court has held in the past that Justice is not to be circumvented by procedure.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing brief have been served upon opposing counsel by mail on the —— day of —— ——.

APPENDIX

STATE OF MINNESOTA
IN SUPREME COURT

No. 46487

HARRIS L. JACKSON,
Plaintiff-Appellant,

vs.

WESLEY J. REILING,
Defendant-Respondent.

Submitted: December 3, 1975
Filed: January 14, 1977

(Caption)

No. 455
Hennepin County
Per Curiam
Endorsed
Filed January 14, 1977
John McCarthy, Clerk
Minnesota Supreme Court

Considered and decided by the court without oral argument.

OPINION

PER CURIAM.

This is an automobile negligence action in which the jury returned a special verdict finding plaintiff 45 percent negligent, defendant 55 percent negligent, and fixing plaintiff's

personal injury damages at $5,000. Plaintiff appeals from an order denying his motion for a new trial on the ground that certain instructions of the trial court regarding damages were erroneous.

The intersection automobile accident which is the subject of this action occurred on July 17, 1965. Plaintiff sustained an injury to his right wrist as a result of that accident. His medical expert testified that he had suffered a 10-percent permanent partial disability of the wrist.

At the time of the accident plaintiff had been employed by the Great Northern Railroad for about 9 1/2 years and was thirty-nine [1] years old.* He took a medical leave of absence following the accident.

In the summer of 1966 the railroad received reports indicating that plaintiff was able to return to work and discovered that he had taken other employment. It demanded that plaintiff report for work and, when he failed to so, he was discharged.[2]

While working for the railroad plaintiff paid into a pension fund. His pension rights were to "vest" after 10 years of employment. Because he was discharged after 9 1/2 years, his pension did not vest.

Before trial, counsel for the parties agreed to a settlement for the damages to plaintiff's automobile and stipulated that no evidence of automobile damages would be introduced.[3]

On appeal, plaintiff contends (1) that the trial court erred in ruling that the alleged loss of the railroad pension rights was too speculative and remote to be considered an appropriate

[1] At the time of the accident the plaintiff was 29 years old.
* Including 2 years of military service.
[2,3] Pure speculation, there is no proof anywhere in the record.

element of damages, and (2) that the trial court erred in giving effect to the stipulation regarding automobile damages.

Damages which are remote and speculative cannot be recovered. Hornblower & Weeks-Hemphill Noyes v. Lazere, 301 Minn. 462, 222 N. W. 2d 799 (1974); Carpenter v. Nelson, 257 Minn. 424, 101 N. W. 2d 918 (1960). There is no general test of remote and speculative damages, and such matters should usually be left to the judgment of the trial court.[4]

Austin v. Rosecke, 240 Minn. 321, 61 N. W. 2d 240 (1953). In the instant case the alleged loss of pension rights was conjectural, both in existence of a causal relationship and in amount of the loss.

The jury, in order to find a causal relationship, would have had to conclude that the accident caused the loss of plaintiff's job; that but for the accident he would have retained his job for the requisite time period; and that he would have survived to retirement age.[5]

Determining the amount of the loss is even more difficult.[6]

It would depend on whether plaintiff would have retained his job with the railroad until retirement, the amount of his social security benefits from other employment, any pensions or substitute compensation earned in other employment,[7] and the length of time he would have lived past retirement.[8]

It is not clear that plaintiff would suffer any loss at all. There was ample justification for the trial court's ruling that these damages were remote and speculative.

Plaintiff also claims the trial court erred in instructing the jury to disregard damages to plaintiff's automobile.

This instruction was given pursuant to a settlement made

[4] Ambiguous statement, fraud with intent to circumvent justice.
[5] VII Amendment guarantee, decision best left to jury.
[6] Minimum pension calculations follow opinion.
[7] Immaterial, irrelevant, speculative (plaintiff is self employed).
[8] Life spans are decided by insurance statistics.

by plaintiff's counsel. Even if plaintiff misunderstood the effect of that settlement, he was bound thereby. Ghostley v. Hetland, 295 Minn. 376, 204 N. W. 2d 821 (1973).[9]

Plaintiff cannot base his appeal on an instruction which his own counsel submitted to the trial court by stipulation.[10] Ellering v. Gross, 189 Minn. 68, 248 N. W. 330 (1933); cf. Majerus v. Guelsow, 262 Minn. 1, 113 N. W. 2d 450 (1962).

The decision of the trial court must be and hereby is affirmed.

Affirmed.

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[9] Pure speculation, there is no proof anywhere in the record.
[10] Pure speculation, there is no proof anywhere in the record.

The following information regarding the value of the pention of the petitioner is certified by the Railroad Retirement Board.

Harris L. Jackson, S.S.A. No. 468-38-4688.

Accumulated compensation as of July 1965, $31,986.67.

Compensation $31,986.67 divided by 120 months of service equals $266.55 average monthly compensation, with 10 years of service the monthly benefit with the above compensation is $180.00.

The above figure is the minimum figure for today. The actual figure will be higher due to inflation and cost of living increases.

THE ACCIDENT SCENE

The defendant's vehicle waiting for the red light (top center square box) (T. pp 171, line 4-10)

The plaintiff's vehicle waiting for the red light (bottom center circle) (T. pp 19-20)

The defendant's vehicle in a stopped position immediately before the collision (vehicle with cross) T. pp 23, line 20-22) (T. pp 190, line 2-5)

The plaintiff's vehicle in motion immediately before the collision (vehicle with black dot) (T. pp 24, line 7-9)

The collision at the semaphore triangle. The defendant's vehicle broke off several of the semaphore guard posts. (X marks the collision) (T. pp 26, line 16-19)

The broken line indicates the attempted path of the defendant's vehicle.